

REPORT OF THE COMMITTEE ON PLANNING

Voting Members:

Ikaika Anderson, Chair; Heidi Tsuneyoshi, Vice-Chair;
Michael Formby, Carol Fukunaga, Joey Manahan, Kymberly Marcos Pine

Committee Meeting Held
March 18, 2019

Honorable Ann H. Kobayashi
Interim Chair, City Council
City and County of Honolulu

Madam Chair:

Your Committee on Planning, to which was referred Bill 89 (2018) entitled:

"A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTALS,"

transmitted by Mayor's Message 152 (2018), dated November 7, 2018, introduced on November 15, 2018, which passed First Reading at the December 5, 2018 Council meeting, reports as follows:

The purpose of Bill 89 (2018) is to amend the Land Use Ordinance ("LUO"), Chapter 21, Revised Ordinances of Honolulu 1990, to better regulate short-term rentals. The Department of Planning and Permitting ("DPP") offered this proposal on its own initiative as a revised alternative to four Council-initiated proposals relating to short-term rentals.

Your Committee finds that the Planning Commission, after a public hearing held on October 31, 2018, at which oral and written public testimony was received on the proposed LUO amendment, voted to recommend approval of the proposal in concurrence with the recommendation of the DPP in the Attachment to Mayor's Message 152 (2018). The Planning Commission also recommended certain amendments to the proposal.

At your Committee's meeting on March 18, 2019, your Committee considered Bill 89 (2018) and Bill 85 (2018) together. Bill 85 (2019) is a Council-initiated short-term rental proposal.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
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ADOPTED ON **APR 17 2019**

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Mayor Caldwell testified in support of the intent of both measures, noting that the regulation of short-term rentals has been a longstanding issue for the City. The Mayor offered comments on the need for fairness and balance, and highlighted critical issues that the Administration believes should be addressed.

The DPP Land Use Permits Division Chief testified in support of the intent of both measures, and stated that there appears to be agreement on many of the provisions in the proposals.

At your Committee's meeting on March 18, 2019, UNITE HERE Local 5, American Hotel and Lodging Association, Hawaii Appleseed Center for Law and Economic Justice, Hawaii Lodging and Tourism Association, Hawaii Tourism Association, Hilton Hawaiian Village, Oahu Alternative Lodging Association, and 10 individuals testified in support of the bill. Frazer-Franz Family Hui, Kobayashi Sugita Goda, Save Oahu's Neighborhood, Hawaii Good Neighbor, and 21 individuals testified in opposition of the bill. Fifteen individuals offered comments on the bill.

Your Committee received written testimony support of the bill from Expedia, Hawaii Vacation Properties LLC, Sheraton Waikiki, and 121 individuals. Written testimony in opposition to the bill was received from Expedia, Hawaii's Thousand Friends, Belle & Froggy, GalleryHomesHawaii, PBE Villas LLC, Airbnb, ColoMaui LLC, Goldrush Getaways, Inet Realty, Kou Hale Realty, Lanikai Association, Keep It Kailua, and 482 individuals. Hawaiian Airlines, Lokoea Farms, Real Estate Industry, Residents of Kapuai Place Sunset Beach North Shore, and 29 individuals submitted comments on the bill.

Your Committee members expressed concerns regarding the expansion of short-term rentals into certain zoning districts, and the challenges associated with crafting fair rules for a lottery process to determine short-term rental registration priorities.

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Your Committee has prepared a CD1 version of Bill 89 (2018), which makes the following amendments:

- A. Clarifies the language in the "Findings and Purpose" clause in SECTION 1 of the bill.
- B. Deletes SECTION 2 of the bill, containing the real property tax provisions. Renumbers subsequent bill SECTIONS accordingly.
- C. In renumbered SECTION 3 of the bill, corrects Section 21-2.150-2 to reflect the current language of the section. Reformats the proposed amendments to the section.
- D. In Section 21-2.150-2(c)(1)(D), increases the daily penalty from \$1,000 to \$5,000.
- E. Revises new Section 21-2.150-2(c)(2) to decrease the penalties as follows:
 - 1. For the first recurring violation, from \$25,000 and \$25,000 per day to \$10,000 and \$10,000 per day;
 - 2. For the second recurring violation, from \$50,000 and \$50,000 per day to \$20,000 and \$20,000 per day; and
 - 3. For the third recurring violation, from \$100,000 and \$100,000 per day to \$50,000 and \$50,000 per day.
 - 4. Provides that the DPP Director may not negotiate any reduction in the fines imposed under subdivision (2).

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- F. In SECTION 4 of the bill, conforms the amendatory language and the amendments to the standard format for revisions to Table 21-3 ("Master Use Table").
- G. In Table 21-3 ("Master Use Table"):
 - 1. Deletes the proposed expansion of the TVU use beyond the Resort District and A-2 Medium Density Apartment District, where they are currently permitted, and makes conforming amendments throughout the bill;
 - 2. Permits B&Bs (subject to the conditions in Article 5) in the AG-2 General Agricultural District and Country District.
 - 3. Revises the designation for bed and breakfast homes and transient vacation units in the resort district from "P" to "P/c", so that the advertising requirements apply to all short term rentals.
- H. Adds new SECTIONS 5 and 6 to the bill, amending, respectively, Sections 21-4.110-1 and 21-4.110-2, the sections governing the TVUs and B&Bs currently operating under nonconforming use certificates, to update the language of the sections, and to make those TVUs and B&Bs subject to the advertising requirements in proposed new Section 21-5.__(c). Renumbers subsequent bill SECTIONS accordingly.
- I. In renumbered SECTION 7 of the bill, adds a provision in proposed new Section 21-5.__(b)(1) to require any dwelling unit used as a bed and breakfast home to be registered with the DPP, and to clarify that the term "owner or operator" includes the trustee of a revocable trust that owns the property.

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- J. In renumbered Section 21-5.__(b)(1)(D), in addition to a real property tax home exemption, requires that an applicant for registration of a B&B must have a minimum 50 percent ownership interest in the subject property.
- K. In renumbered Section 21-5.__(b)(1)(E), decreases the B&B initial registration fee from \$800 to \$100.
- L. Adds proposed new Sections 21-5.__(b)(1)(J), 21-5.__(b)(2)(I), and 21-5.__(b)(3)(K) to require that if a B&B is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a residential homesite area (as defined in Section 8-7.3(a)) must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3.
- M. In renumbered Section 21-5.__(b)(2), clarifies that the term "owner or operator" includes the trustee of a revocable trust that owns the property.
- N. In renumbered Section 21-5.__(b)(2)(E), increases the B&B registration renewal fee from \$200 to \$2,000.
- O. In proposed new Section 21-5.__(b)(3)(A), replaces the term "roomers" with the phrase "renters of the detached dwelling other than the bed and breakfast home guests."
- P. In proposed new Section 21-5.__(b)(3)(I), provides that the total number of B&Bs permitted in each development plan area (excluding those in the Resort District, Resort Mixed Use Precinct of the Waikiki Special District, and certain A-2 Apartment Districts) is limited to no more than one percent of the total number of

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dwelling units in that development plan area. Provides that the DPP Director shall adopt rules to implement and administer any lottery.

- Q. Adds a new Section 21-5.__(b)(7), which exempts from the requirements of the subsection B&Bs operating under valid nonconforming use certificates pursuant to Section 21-4.110-2. These B&Bs will be allowed to continue to operate under their nonconforming use certificates.
- R. Moves the advertisement provisions in SECTION 10 of the bill to new Section 21-5.__(c) in renumbered SECTION 7.
- S. In proposed new Section 21-5.__(c)(1), clarifies the definitions of "advertisement" and "person."
- T. In proposed new Section 21-5.__(c)(2)(A), provides that advertisements for B&Bs and TVUs must include the registration number or nonconforming use certificate number for that B&B or TVU; and that advertisements for B&Bs or TVUs located in the Resort District, Resort Mixed Use Precinct of the Waikiki Special District, and the A-2 Medium Density Apartment Zoning District pursuant to Section 21-5.__(a) must include the street address, including, if applicable, any apartment unit number, for that B&B or TVU.
- U. Deletes former proposed Section 40-__.3(c) relating to an exemption from advertising requirements for legally established short-term rentals in the Resort District, Resort Mixed Use Precinct of the Waikiki Special District, and those allowed in the A-2 Medium Density Apartment Zoning District.
- V. Clarifies the exemptions in new Section 21-5.__(c)(3).

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- W. In renumbered SECTION 9 of the bill, conforms the amendatory language and the amendments to the standard format for revisions to Table 21-6.1 ("Off-street Parking Requirements"). Also clarifies that for B&Bs, one off-street parking space is required for each guest bedroom. Deletes the transient vacation unit entry because TVUs in the Resort District, Resort Mixed Use Precinct of the Waikiki Special District, and those allowed in the A-2 Medium Density Apartment District; and TVUs operating under valid nonconforming use certificates are exempt from the parking requirements.
- X. Moves the revisions to the footnotes for Tables 21-6.1, 21-6.2, and 21-6.3 to a new SECTION 10 of the bill. Renumbers subsequent bill SECTIONS accordingly. Amends proposed new footnote 7 to also exclude B&Bs operating under valid nonconforming use certificates pursuant to Section 21-4.110-2. Adds new footnote 8 to clarify that the requirement of one off-street parking per guest bedroom for bed and breakfast homes is in addition to the off-street parking requirement applicable to the dwelling unit being used as a bed and breakfast home.
- Y. In renumbered SECTION 11 of the bill, amends Table 21-9.6(A) ("Waikiki Special District Precinct Permitted Uses and Structures"):
1. To add B&Bs as a proposed new permitted use, subject to conditions, in the Apartment Precinct of the Waikiki Special District; add B&Bs as a permitted use, subject to conditions, in the Resort Mixed Use Precinct; and revise the designation for TVUs in the Resort Mixed Use Precinct from "P" to "P/c," so that the advertising requirements apply to all short-term rentals.

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2. To add the following to the "Ministerial uses" note to the table:

"P/c = Permitted use subject to standards in Article 5"

- Z. Adds a new SECTION 12 to the bill to regulate hosting platforms pursuant a new article under ROH Chapter 41 ("Regulated Activities Within the City").
- AA. Adds a new uncodified SECTION 13 to the bill, providing that TVUs and B&Bs operating under valid nonconforming use certificates on the effective date of the ordinance may continue to operate pursuant to the TVU/B&B nonconforming use certificate ordinances. Renumbers subsequent SECTIONS accordingly.
- BB. In renumbered SECTION 14 of the bill, adds a provision to instruct the Revisor of Ordinances to replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of the ordinance with the actual date on which the ordinance takes effect.
- CC. Adds a severability clause as new SECTION 15 of the bill. Renumbers subsequent SECTIONS.
- DD. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee believes that additional public testimony at the public hearing recommended herein to be scheduled on this bill will provide further assistance to your Committee and to the Council in their deliberations on this bill.

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Your Committee on Planning recommends that Bill 89 (2018), as amended herein, pass Second Reading in the form attached hereto as Bill 89 (2018), CD1, be scheduled for public hearing, and be referred back to Committee. (Ayes: Anderson, Formby, Fukunaga, Manahan, Tsuneyoshi – 5; Noes: None; Excused: Pine - 1.)

Respectfully submitted,



Committee Chair

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ADOPTED ON APR 17 2019

COMMITTEE REPORT NO. 69



A BILL FOR AN ORDINANCE

RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The purpose of this ordinance is to better regulate short-term rentals. Short-term rentals, which are the use of residential dwellings for stays of less than 30 days, have grown significantly since being first regulated by the City in 1989. The use of social media has increased opportunities for visitors to consider short-term rentals during their stay on Oahu. Based on on-line advertising, there are an estimated 8,000 to 10,000 short-term rentals available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance. Current Land Use Ordinance enforcement tools are outdated and not effective in regulating the expanding short-term rental industry, particularly with respect to social media advertising and online booking services. In addition, the hotel industry, while not opposed to short-term rentals, takes the position that requirements imposed on hotels should equally apply to short-term rentals. Short-term rentals are currently classified as "residential" for real property tax purposes. The high rents that may be charged for short-term rentals, which may be as much as \$8,000 per night, result in an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the City and State in terms of jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, short-term rentals are viewed as important supplemental income, serving as sources of revenue, and enabling homeowners to qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many residents desire to use the dwelling for their own use for portions of the year, so they are not able to offer the dwelling for rental on a long-term basis.

However, neighborhoods may be negatively impacted by the presence of short-term rentals, including escalating real property values, increased noise, illegal parking, and increased traffic. There is a concern that homes are being purchased as income-producing investments rather than for domiciliary purposes. Residents are generally comfortable with bed and breakfast homes because an on-site resident manager or owner is responsible for the bed and breakfast home, and can respond to any problems associated with short-term guests. In contrast, residents generally voice strong concerns about "unhosted" transient vacation units, particularly when a significant number of transient vacation units are located in the same neighborhood. Significant numbers of absentee owners and constant change in occupancy may change the social patterns of neighborhoods and reduce interactions among neighbors, resulting in a decline in the quality of life for residents.



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This ordinance is intended to balance competing views associated with short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation units, and provides a registration system to allow both types of operations to expand under express regulatory standards and requirements, which will be monitored through an annual registration renewal process. This ordinance also includes significant penalties for illegally operating a short-term rental, and for advertising an illegal short-term rental. In addition, this ordinance regulates hosting platforms by requiring them to exercise reasonable care to confirm that a bed and breakfast home or transient vacation unit is being legally operated at the time the booking services are provided. Finally, this ordinance establishes a new tiered real property tax classification based on the type of short-term rental operation being conducted, without penalizing adjacent residential real property assessments, and represents a regulatory system that coordinates annual land use review with annual tax assessments.

SECTION 2. Section 8-10.5, Revised Ordinances of Honolulu 1990 ("Home, lease, lessees defined"), is amended by amending subsection (b) to read as follows:

"(b) The subletting by the taxpayer of not more than ~~[one room]~~ two rooms to a tenant shall not affect the exemption provided for by Section 8-10.4."

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

(a) In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with a written notice of violation and order pursuant to this section. However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

[(a)](b) Contents of the Notice of Violation. The notice must include at least the following information:



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- (1) Date of the notice;
- (2) The name and address of the person noticed;
- (3) The section number of the provision or rule, or the number of the permit that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

~~[(b)]~~(c) Contents of Order.

- (1) The order may require the person to do any or all of the following:
 - (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense before a date specified in the order;
 - (C) Pay a civil fine not to exceed ~~[\$1,000.00]~~ \$1,000 in the manner, at the place and before the date specified in the order; and
 - (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$5,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) Notwithstanding the civil fines specified in subdivision (1)(C) and (D), if the violation is a recurring violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to requirements in subdivision (1)(A) and (B), the order may require a person to do any or all of the following:
 - (A) For the first recurring violation:
 - (i) Pay a civil fine of \$10,000 in the manner, at the place, and before the date specified in the order; and
 - (ii) Pay a civil fine of \$10,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.



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(B) For the second recurring violation:

- (i) Pay a civil fine of \$20,000 in the manner, at the place, and before the date specified in the order; and
- (ii) Pay a civil fine of \$20,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.

(C) For the third recurring violation and each recurring violation thereafter:

- (i) Pay a civil fine of \$50,000 in the manner, at the place, and before the date specified in the order; and
- (ii) Pay a civil fine of \$50,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.

The director may not negotiate any reduction in the fines imposed under this subdivision.

~~[(2)]~~(3) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

~~[(e)]~~(d) Effect of Order--Right to Appeal. The provisions of the order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Charter Section 6-1516 ~~[of the city charter]~~. However, an appeal to the zoning board of appeals will not stay any provision of the order.

~~[(d)]~~(e) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(f) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient



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vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

- (g) Nothing in this section shall preclude the director from seeking any other remedy available by law."

SECTION 4. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to add a "bed and breakfast homes" entry and revise the "transient vacation units" entry to read as follows:



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"TABLE 21-3 MASTER USE TABLE

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																					
<u>Bed and breakfast homes</u>			P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c			P/c	P/c				
Transient vacation units								P/c					P/c P/c								



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SECTION 5. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

- (a) The purpose of this section is to ~~[treat]~~ permit certain transient vacation units ~~[which] that~~ have been in operation since prior to October 22, 1986, ~~[as nonconforming uses and to allow them]~~ to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.
- ~~[(b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~
- ~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.]~~
- ~~[(d)](b)~~ The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
- (1) between September 1, 2000 and October 15, 2000; then
 - (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- ~~[(e)]~~(c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The provisions of Section 21-5. (c) shall apply to advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section.

SECTION 6. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 Bed and breakfast homes--Nonconforming use certificates.

- (a) The purpose of this section is to ~~[generally prohibit bed and breakfast homes, while permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.
- ~~[(b)]~~ The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. ~~The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating~~



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~~existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~

- ~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.]~~

[(d)](b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

[(e)](c) ~~Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts.] Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~



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~~[(f)]~~(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.
- (2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.
- (3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.
- (4) One off street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.
- (5) The provisions of Section 21-5. (c) shall apply to advertisements for the bed and breakfast home.

~~[(g)]~~(e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises."

SECTION 7. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Sec. 21-5. Bed and breakfast homes and transient vacation units.

(a) Bed and breakfast homes and transient vacation units are permitted in the A-2 medium density apartment zoning district provided:

- (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.



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- (b) In all zoning districts where bed and breakfast homes are permitted, except for the resort district, resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), and except as otherwise provided in subdivision (7), the following standards and requirements apply:
- (1) For a bed and breakfast home that will be occupied by transient residents for more than 30 days per calendar year, the owner or operator, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, shall register the bed and breakfast home with the department and shall submit the following in the initial application for registration:
- (A) Affirmation that the applicant of the bed and breakfast home is a natural person;
 - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;
 - (C) A valid current State of Hawaii general excise tax license and transient accommodations tax license for the subject property;
 - (D) Evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;
 - (E) An initial fee of \$100 for the bed and breakfast home;
 - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the subject property;
 - (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;
 - (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and
 - (I) A floor plan showing the location of guest rooms for a bed and breakfast home.



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- (J) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.
- (2) Registration renewal requirements. Annually, by August 30, the owner or operator, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, of a bed and breakfast home that will be occupied by transient residents for more than 30 days per calendar year shall submit to the department:
- (A) Affirmation that the applicant for the bed and breakfast home is a natural person;
 - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;
 - (C) Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;
 - (D) Evidence of a real property tax home exemption for the subject property;
 - (E) A renewal fee of \$2,000 for the bed and breakfast home;
 - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the property;
 - (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules; and
 - (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city.



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- (I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.

The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if complaints from the public indicate that noise created by guests disturbs residents of the neighborhood in which the bed and breakfast home is located, or where other good cause exists, the director may deny the renewal application.

- (3) Restrictions and Standards. Bed and breakfast homes that will be occupied by transient residents for more than 30 days per calendar year must operate in accordance with the following restrictions and standards:
- (A) Detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of the detached dwelling other than the bed and breakfast home guests are not permitted;
 - (B) No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;
 - (C) Functioning smoke and carbon monoxide detectors must be installed in each bedroom;
 - (D) House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;
 - (E) When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;
 - (F) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays;
 - (G) No exterior signage that shows the dwelling unit is used as a bed and breakfast home is allowed;



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- (H) Registration as a bed and breakfast home is not transferable, and shall not run with the land;
- (I) Development Plan Area Density Limit. Excluding bed and breakfast homes in the resort district, resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes allowed, the number of bed and breakfast homes permitted in each development plan area is limited to no more than one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery; and
- (J) Multifamily Dwelling Density Limit. Excluding multifamily dwellings in the resort district, resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units cannot exceed 50 percent of the units in a multifamily dwelling.
- (K) If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3.
- (4) Dwelling units to be used as bed and breakfast homes for less than 30 days per calendar year may register as limited short-term rentals. Applicants shall annually file a registration form with the department acknowledging that the rental period is limited to less than 30 days per calendar year. The filing fee is \$50. The application may be filed with the department at any time.



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- (5) Upon reasonable notice, any bed and breakfast home must be made available for inspection by the department.
- (6) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring violations will result in denial of renewal requests.
- (7) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
- (c) Advertisements.
- (1) Definitions. As used in this subsection:
- "Advertisement" means any sign; banner; written, graphic, or pictorial statement; or broadcast in English or any other language, used to publicize or offer for accommodation any dwelling unit or lodging unit, or portion thereof, or any other permanent or temporary habitable space within the city as a bed and breakfast home or transient vacation unit.
- "Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.
- (2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units are subject to this subsection, regardless of the number of days per calendar year that the bed and breakfast home or transient vacation unit is used for transient accommodations.
- (A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement:
- (1) A current registration number obtained pursuant to this section, or nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2; or
- (2) For bed and breakfast homes or transient vacation units located in the resort district, resort mixed use precinct of the Waikiki special district, and in the A-2 medium density apartment zoning district pursuant to subsection (a), the street address, including, if applicable, any apartment unit



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number, for that bed and breakfast home or transient vacation unit.

- (B) Upon receipt of a notice of violation, the advertisement must be removed within seven days. If the advertisement is not removed within seven days, a fine will be levied for each day the advertisement is on public display, as provided in subdivision (4).
- (C) The existence of an advertisement will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.
- (3) Exemptions. The following are exempt from the provisions of this subsection.

 - (A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in Chapter 21, Article 10.
 - (B) Legally established time-sharing units, as provided in Section 21-5.640.
 - (C) Legally established dwelling units that are rented for periods of 30 days or more.
- (4) Penalties. Any person who violates any of the provisions of this subsection shall be fined not less than \$25,000 and not more than \$50,000 for each day that the advertisement is on public display beyond seven days from the date a notice of violation is received. Landowners, agents, or any other person associated with the property shall be liable for each violation, whether or not they are named in the advertisement."



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SECTION 8. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing [~~and transient vacation~~] units.

Time sharing [~~and transient vacation~~] units [~~shall be~~] are permitted in the A-2 medium density apartment zoning district provided:

- (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community."

SECTION 9. Table 21-6.1, Revised Ordinances of Honolulu 1990 ("Off-street Parking Requirements"), is amended by amending the "Commerce and Business" category to add an entry for "bed and breakfast homes" to read as follows:

"

Table 21-6.1 Off-street Parking Requirements	
Use ¹	Requirement ²
COMMERCE AND BUSINESS	
<u>Bed and breakfast homes⁷</u>	<u>1 per guest bedroom⁸</u>

"



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SECTION 10. The footnotes for Tables 21-6.1 ("Off-street Parking Requirements"), 21-6.2 ("Off-street Parking Requirements BMX 4 Central Business Mixed Use"), and 21-6.3 ("Off-street Parking Requirements Waikiki Special District"), Revised Ordinances of Honolulu 1990, are amended to read as follows:

"Notes:

1. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements.
2. All references to square feet refer to floor area.
3. Parking standards for individual uses shall prevail if they are not part of a commercial use that meets the definition of "shopping center."
4. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the BMX-4 district.
5. All references to square feet refer to floor area.
6. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the Waikiki special district.
7. Excluding bed and breakfast homes in the resort district, resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to section 21-5. (a), and bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
8. This requirement is in addition to the off-street parking requirement applicable to the dwelling unit being used as a bed and breakfast home."



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SECTION 11. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended:

- a. By adding a "bed and breakfast homes" entry and revising the "transient vacation units" entry to read as follows:

"

Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
<u>Bed and breakfast homes</u>	<u>P/c</u>	<u>P/c</u>	
Transient vacation units		[P] P/c	

"

- b. By amending the "Ministerial uses" note to the table to read as follows:

"Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct
- P/c = Permitted use subject to standards in Article 5"

SECTION 12. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Hosting Platforms

Sec. 41-__.1 Definitions.

As used in this article:

"Bed and breakfast home" has the same meaning as defined in Chapter 21, Article 10.



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"Booking service" means any reservation or payment service provided by a person that facilitates a transaction between an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit, and a prospective user of that bed and breakfast home or transient vacation unit, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation or payment services provided for by the transaction.

"Department" means the department of planning and permitting.

"Director" means the director of planning and permitting.

"Hosting platform" means a person that collects or receives a fee for booking services through which an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit may offer use of the bed and breakfast home or transient vacation unit. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the bed and breakfast home or transient vacation unit through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the bed and breakfast home or transient vacation unit, whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform.

"Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.

"Transient vacation unit" has the same meaning as defined in Chapter 21, Article 10."

Sec. 41-__2 Regulation of hosting platforms.

- (a) A hosting platform may provide and collect a fee for booking services in connection with a bed and breakfast home or transient vacation unit located in the city only when the hosting platform exercises reasonable care to confirm that at the time the booking services are provided, the:
 - (1) Transient vacation unit is located in the resort district, resort mixed use district of the Waikiki special district, or A-2 medium density apartment zoning district pursuant to Section 21-5.640;
 - (2) Transient vacation unit is operating under a valid nonconforming use certificate pursuant to Section 21-4.110-1; or



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- (3) Bed and breakfast home is operating under a valid nonconforming use certificate pursuant to Section 21-4.110-2; or
- (4) Bed and breakfast home is operating under a valid registration pursuant to Section 21-5.__(b).

Whenever a hosting platform verifies that the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit is complying with the advertising requirements of Section 21-2.150-3, the hosting platform shall be deemed to have exercised reasonable care for purposes of this subsection.

- (b) Commencing on the fifth day of the month that begins immediately following the effective date of this ordinance, and on the fifth day of every month thereafter, a hosting platform that provides booking services for any bed and breakfast homes or transient vacation units in the city shall provide the department with:
 - (1) A signed affidavit verifying that the hosting platform has complied with subsection (a) in the immediately preceding month; and
 - (2) A record of all listings for bed and breakfast homes and transient vacation units in the city for the immediately preceding month.
- (c) For not less than three years following the end of the calendar year in which a hosting platform provides booking services for a bed and breakfast home or transient vacation unit in the city, the hosting platform shall maintain, and upon lawful request, provide to the director or the director's authorized agent the following information for each booking service provided by the hosting platform:
 - (1) Name of the owner, operator, or proprietor that offered the use of a bed and breakfast home or transient vacation unit;
 - (2) The address of the bed and breakfast home or transient vacation unit;
 - (3) The dates for which an occupant procured the use of a bed and breakfast home or transient vacation unit using the booking service provided by the hosting platform;
 - (4) Any applicable nonconforming use certificate number for the bed and breakfast home or transient vacation unit; and
 - (5) The applicable affidavit required in subsection (b).



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- (d) The director shall, by rules adopted pursuant to HRS Chapter 91, provide for procedures by which the department shall verify whether a hosting platform is complying with this article.

Sec. 41-__3 Penalty.

- (a) Criminal prosecution. A hosting platform violating any provision of this article shall, upon conviction, be guilty of a misdemeanor and subject to punishment in accordance with HRS Sections 706-640 and 706-663, as amended.
- (b) Administrative enforcement. In lieu of or in addition to enforcement pursuant to subsection (a), if the director determines that a hosting platform is violating any provision of this article, the violator is subject to the administrative enforcement provisions of Section 21-2.150-2; provided that notwithstanding the civil fines specified in Section 21-2.150-2(b)(1)(C) and 21-2.150-2(b)(1)(D), a violator is subject to a civil fine of not less than \$25,000 and not more than \$50,000 for each violation, and a civil fine of not less than \$25,000 and not more than \$50,000 for each day the violation persists."

SECTION 13. An owner, operator, or proprietor of a transient vacation unit or a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance shall be allowed to continue to operate the transient vacation unit or bed and breakfast home and renew the nonconforming use certificate pursuant to those respective sections. The owner, operator, or proprietor of the transient vacation unit or the bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner, operator, or proprietor of a bed and breakfast home may thereafter apply to register the bed and breakfast home pursuant to the provisions of this ordinance.

SECTION 14. In SECTIONS 2 through 11 of this ordinance, material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 89 (2018), CD1

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SECTION 15. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 16. This ordinance takes effect on November 1, 2019.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

November 15, 2018
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu